IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3622 OF 2006

IN

SUIT NO. 1235 OF 1986

The Board of Trustees
of the Port of Bombay ....Plaintiffs.
vs.
The Standard Mills Co.Ltd ....Defendants.

Mr.U.J. Makhija with H.Munjee i/by.Mulla and Mulla
for the plaintiffs to show cause.

Mr. Virag Tulzapurkar, Sr. Advocate with Ms. Saumya Srikrishna i/by.Kanga and Co.
for the defendants in support.

CORAM: S.J. VAZIFDAR, J.

NOVEMBER 15, 2006.

P.C. :

1. By this Notice of Motion, the defendant seeks to set aside the ex-parte decree dated 10/10/2003 in the sum of about Rs.39 lacs with interest.

2. After the suit was filed and even before the defendant was served with the writ of summons the

defendant's standing advocate accepted the service on 7/10/1987, This indicates that there was no want of diligence on the part of the defendant. It appears that there has been a dispute regarding the liability itself.

3. There were protracted negotiations between the parties which continued till atleast 29/01/2001. In the meantime, it appears that the writ of summons was also served on the defendants and the same was sent to the defendant's advocate but without a plaint. Through inadvertence the Vakalatnama remained to be filed. The same was probably due to the fact that in any event the parties were under the genuine impression that the negotiations would lead to a settlement. Indeed by a letter dated 29/01/2001 the plaintiffs themselves scaled down the claim to Rs.4,14,000/- This is clearly admitted in the letter. Despite the same the decree has been passed for the entire amount.

4. In the circumstances, this is a fit case to set aside the ex-parte decree.

5.(i) The Notice of Motion is therefore made absolute in terms of prayer clauses (a), (ai) and (b).

(ii) The Written statement shall be filed within four weeks from today.

(iii) The defendant’s undertaken to satisfy any decree that may be passed without forcing the plaintiffs to execute the same, subject, ofcourse to a right of appeal.

(iv) The defendant shall pay to the plaintiffs the costs of this Notice of Motion fixed at Rs.5,000/- within four weeks from today.

sd/-

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